

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

LAC Hong Inc., a California
Corporation;
Hong Quang Le, in individual and
representative capacity as trustee of
the Le Trust, created on August 31,
1999;
Helen Le, in individual and
representative capacity as trustee of
the Le Trust, created on August 31,
1999; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of LAC Hong Inc., a California Corporation; Hong Quang Le, in individual and representative capacity as trustee of the Le Trust, created on August 31, 1999; Helen Le, in individual and representative capacity as trustee of the Le Trust, created on August 31, 1999; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendant LAC Hong Inc. owned the real property located at or about
5 414 E. William Street, San Jose, California, between December 2018 and
6 January 2020.

7 3. Defendant LAC Hong Inc. owns the real property located at or about
8 414 E. William Street, San Jose, California, currently.

9 4. Defendants Hong Quang Le and Helen Le, in individual and
10 representative capacity as trustee of the Le Trust, created on August 31, 1999,
11 owned the parking lot located at or about 414 E. William Street, San Jose,
12 California, between December 2018 and January 2020.

13 5. Defendants Hong Quang Le and Helen Le, in individual and
14 representative capacity as trustee of the Le Trust, created on August 31, 1999,
15 own the parking lot located at or about 414 E. William Street, San Jose,
16 California, currently.

17 6. Plaintiff does not know the true names of Defendants, their business
18 capacities, their ownership connection to the property and business, or their
19 relative responsibilities in causing the access violations herein complained of,
20 and alleges a joint venture and common enterprise by all such Defendants.
21 Plaintiff is informed and believes that each of the Defendants herein,
22 including Does 1 through 10, inclusive, is responsible in some capacity for the
23 events herein alleged, or is a necessary party for obtaining appropriate relief.
24 Plaintiff will seek leave to amend when the true names, capacities,
25 connections, and responsibilities of the Defendants and Does 1 through 10,
26 inclusive, are ascertained.

27
28 **JURISDICTION & VENUE:**

1 7. The Court has subject matter jurisdiction over the action pursuant to 28
2 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
3 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

4 8. Pursuant to supplemental jurisdiction, an attendant and related cause
5 of action, arising from the same nucleus of operative facts and arising out of
6 the same transactions, is also brought under California's Unruh Civil Rights
7 Act, which act expressly incorporates the Americans with Disabilities Act.

8 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
9 founded on the fact that the real property which is the subject of this action is
10 located in this district and that Plaintiff's cause of action arose in this district.

11
12 **FACTUAL ALLEGATIONS:**

13 10. Plaintiff went to the property to visit the Corner Deli & Grill
14 ("Restaurant") in December 2018, April 2019 and January 2020 with the
15 intention to avail himself of its goods motivated in part to determine if the
16 defendants comply with the disability access laws.

17 11. The Restaurant is a facility open to the public, a place of public
18 accommodation, and a business establishment.

19 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
20 to provide wheelchair accessible parking in conformance with the ADA
21 Standards as it relates to wheelchair users like the plaintiff.

22 13. On information and belief the defendants currently fail to provide
23 wheelchair accessible parking.

24 14. Additionally, on the dates of the plaintiff's visits, the defendants failed
25 to provide wheelchair accessible entrance door hardware in conformance with
26 the ADA Standards as it relates to wheelchair users like the plaintiff.

27 15. On information and belief the defendants currently fail to provide
28 wheelchair accessible entrance door hardware.

1 16. Moreover, on the dates of the plaintiff's visits, the defendants failed to
2 provide wheelchair accessible restrooms in conformance with the ADA
3 Standards as it relates to wheelchair users like the plaintiff.

4 17. On information and belief the defendants currently fail to provide
5 wheelchair accessible restrooms.

6 18. Finally, on the dates of the plaintiff's visits, the defendants failed to
7 provide wheelchair accessible dining surfaces in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 19. On information and belief the defendants currently fail to provide
10 wheelchair accessible dining surfaces.

11 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
12 personally encountered these barriers.

13 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
14 wheelchair accessible facilities. By failing to provide accessible facilities, the
15 defendants denied the plaintiff full and equal access.

16 22. The failure to provide accessible facilities created difficulty and
17 discomfort for the Plaintiff.

18 23. The defendants have failed to maintain in working and useable
19 conditions those features required to provide ready access to persons with
20 disabilities.

21 24. The barriers identified above are easily removed without much
22 difficulty or expense. They are the types of barriers identified by the
23 Department of Justice as presumably readily achievable to remove and, in fact,
24 these barriers are readily achievable to remove. Moreover, there are numerous
25 alternative accommodations that could be made to provide a greater level of
26 access if complete removal were not achievable.

27 25. Plaintiff will return to the Restaurant to avail himself of its goods and to
28 determine compliance with the disability access laws once it is represented to

1 him that the Restaurant and its facilities are accessible. Plaintiff is currently
 2 deterred from doing so because of his knowledge of the existing barriers and
 3 his uncertainty about the existence of yet other barriers on the site. If the
 4 barriers are not removed, the plaintiff will face unlawful and discriminatory
 5 barriers again.

6 26. Given the obvious and blatant nature of the barriers and violations
 7 alleged herein, the plaintiff alleges, on information and belief, that there are
 8 other violations and barriers on the site that relate to his disability. Plaintiff will
 9 amend the complaint, to provide proper notice regarding the scope of this
 10 lawsuit, once he conducts a site inspection. However, please be on notice that
 11 the plaintiff seeks to have all barriers related to his disability remedied. See
 12 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 13 encounters one barrier at a site, he can sue to have all barriers that relate to his
 14 disability removed regardless of whether he personally encountered them).

15
 16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 17 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 18 Defendants.) (42 U.S.C. section 12101, et seq.)

19 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 20 again herein, the allegations contained in all prior paragraphs of this
 21 complaint.

22 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 23 privileges, advantages, accommodations, facilities, goods and services of any
 24 place of public accommodation is offered on a full and equal basis by anyone
 25 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 26 § 12182(a). Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,
 28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADA Standards.

8 c. A failure to make alterations in such a manner that, to the
9 maximum extent feasible, the altered portions of the facility are
10 readily accessible to and usable by individuals with disabilities,
11 including individuals who use wheelchairs or to ensure that, to the
12 maximum extent feasible, the path of travel to the altered area and
13 the bathrooms, telephones, and drinking fountains serving the
14 altered area, are readily accessible to and usable by individuals
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 29. When a business provides parking for its customers, it must provide
17 accessible parking.

18 30. Here, accessible parking has not been provided in conformance with the
19 ADA Standards.

20 31. When a business provides door hardware, it must provide accessible
21 door hardware.

22 32. Here, accessible door hardware has not been provided in conformance
23 with the ADA Standards.

24 33. When a business provides facilities such as restrooms, it must provide
25 accessible restrooms.

26 34. Here, accessible restrooms have not been provided in conformance with
27 the ADA Standards.

28 35. When a business provides facilities such as dining surfaces, it must

1 provide accessible dining surfaces.

2 36. Here, accessible dining surfaces have not been provided in
3 conformance with the ADA Standards.

4 37. The Safe Harbor provisions of the 2010 Standards are not applicable
5 here because the conditions challenged in this lawsuit do not comply with the
6 1991 Standards.

7 38. A public accommodation must maintain in operable working condition
8 those features of its facilities and equipment that are required to be readily
9 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

10 39. Here, the failure to ensure that the accessible facilities were available
11 and ready to be used by the plaintiff is a violation of the law.
12

13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
14 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
15 Code § 51-53.)

16 40. Plaintiff repleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
19 that persons with disabilities are entitled to full and equal accommodations,
20 advantages, facilities, privileges, or services in all business establishment of
21 every kind whatsoever within the jurisdiction of the State of California. Cal.
22 Civ. Code § 51(b).

23 41. The Unruh Act provides that a violation of the ADA is a violation of the
24 Unruh Act. Cal. Civ. Code, § 51(f).

25 42. Defendants’ acts and omissions, as herein alleged, have violated the
26 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
27 rights to full and equal use of the accommodations, advantages, facilities,
28 privileges, or services offered.

1 43. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
2 discomfort or embarrassment for the plaintiff, the defendants are also each
3 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
4 (c).)

5 44. Although the plaintiff encountered frustration and difficulty by facing
6 discriminatory barriers, even manifesting itself with minor and fleeting
7 physical symptoms, the plaintiff does not value this very modest physical
8 personal injury greater than the amount of the statutory damages.
9

10
11 **PRAYER:**

12 Wherefore, Plaintiff prays that this Court award damages and provide
13 relief as follows:

14 1. For injunctive relief, compelling Defendants to comply with the
15 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
16 plaintiff is not invoking section 55 of the California Civil Code and is not
17 seeking injunctive relief under the Disabled Persons Act at all.

18 2. Damages under the Unruh Civil Rights Act, which provides for actual
19 damages and a statutory minimum of \$4,000 for each offense.

20 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
21 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
22

23 Dated: June 8, 2020

CENTER FOR DISABILITY ACCESS

24 By: 

25
26 Amanda Seabock, Esq.
27 Attorney for plaintiff
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